
HOUSE BILL No. 1484

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-45-4; IC 35-50-2-15.

Synopsis: Indecent exposure. Makes it public indecency, a Class A misdemeanor, for a person to appear nude in a public place: (1) with the intent to arouse the sexual desires of the person or another person; or (2) who is at least 18 years of age and has the intent to be seen by a child less than 16 years of age. Increases the penalty if the person has a prior unrelated conviction for public indecency. Makes it indecent exposure, a Class C misdemeanor, for a person to appear nude in a nonpublic place with the intent to be seen by persons other than invitees or occupants of that place. Makes it public nudity, a Class C misdemeanor, for a person to appear nude in a public place. Increases the penalty if the person intends to be seen by another person. Provides that a person may be sentenced as a habitual petty offender if the person is convicted of a felony or Class A misdemeanor and has two prior unrelated convictions for a felony or Class A misdemeanor within the five years preceding the underlying offense. Provides that a person found to be a habitual petty offender will receive an additional fixed term that is not less than one year if the crime is a misdemeanor, or less than the presumptive sentence for the underlying offense if the underlying offense is a felony. Specifies the additional fixed term may not exceed three years if the offense is a misdemeanor and may not exceed three times the presumptive sentence if the offense is a felony. Specifies the maximum additional term a person may receive is five years.

Effective: July 1, 2003.

Stilwell, Foley

January 15, 2003, read first time and referred to Committee on Courts and Criminal Code.



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1484

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-45-4-1, AS AMENDED BY P.L.121-2000,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 1. (a) A person who knowingly or intentionally,
4 in a public place:

- 5 (1) engages in sexual intercourse;
6 (2) engages in deviate sexual conduct;
7 (3) appears in a state of nudity **with the intent to arouse the**
8 **sexual desires of the person or another person; or**
9 (4) **appears in a state of nudity:**

10 (A) **with the intent to be seen by a child less than sixteen**
11 **(16) years of age; and**
12 **(B) at the time of the offense, is at least eighteen (18) years**
13 **of age; or**
14 (5) fondles the person's genitals or the genitals of another person;
15 commits public indecency, a Class A misdemeanor.
16 (b) However, the offense under subsection (a) is a Class D felony if
17 the person **who** commits the offense



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(1) by appearing in the state of nudity with the intent to arouse the sexual desires of the person or another person in or on a public place where a child less than sixteen (16) years of age is present; (2) in a public park and has a prior unrelated conviction that was entered after June 30, 2000, for an offense under this section; (3) in or on school property and has a prior unrelated conviction that was entered after June 30, 2000, for an offense under this section; or (4) in department of natural resources owned or managed property and has a prior unrelated conviction that was entered after June 30, 2000, for an offense under this section: **has a prior unrelated conviction under subsection (a).**

(c) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernibly turgid state.

(d) A person who, in a place other than a public place, with the intent to be seen by persons other than invitees and occupants of that place:

- (1) engages in sexual intercourse;
- (2) engages in deviate sexual conduct; **or**
- (3) fondles the person's genitals or the genitals of another person;

or

- (4) appears in a state of nudity;**

where the person can be seen by persons other than invitees and occupants of that place commits indecent exposure, a Class C misdemeanor.

SECTION 2. IC 35-45-4-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1.5. (a) As used in this section, "nudity" has the meaning set forth in section 1(c) of this chapter.**

(b) A person who knowingly or intentionally appears in a public place in a state of nudity commits public nudity, a Class C misdemeanor. However, the offense is a Class B misdemeanor if the person intends to be seen by another person.

SECTION 3. IC 35-50-2-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 15. (a) Except as otherwise provided in this section, the state may seek to have a person sentenced as a habitual petty offender for any felony or Class A misdemeanor by alleging, on a page separate from the rest of the charging instrument, that the**

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1 person has accumulated two (2) prior unrelated felony or Class A
 2 misdemeanor convictions within the five (5) years immediately
 3 preceding the commission of the felony or Class A misdemeanor.

4 (b) The state may not seek to have a person sentenced as a
 5 habitual petty offender for an offense under this section if the
 6 offense is a misdemeanor that is enhanced to a Class A
 7 misdemeanor in the same proceeding as the habitual petty offender
 8 proceeding solely because the person had a prior unrelated
 9 conviction.

10 (c) A person has accumulated two (2) prior unrelated felony or
 11 Class A misdemeanor convictions for purposes of this section only
 12 if:

- 13 (1) the second prior unrelated felony or Class A misdemeanor
 14 conviction was committed after sentencing for the first prior
 15 unrelated felony or Class A misdemeanor conviction; and
 16 (2) the offense for which the state seeks to have the person
 17 sentenced as a habitual petty offender was committed after
 18 sentencing for the second prior unrelated felony or Class A
 19 misdemeanor conviction.

20 (d) A conviction does not count for purposes of this section as a
 21 prior unrelated felony or Class A misdemeanor conviction if:

- 22 (1) the conviction has been set aside; or
 23 (2) it is a conviction for which the person has been pardoned.

24 (e) The requirements in subsection (b) do not apply to a prior
 25 unrelated Class A misdemeanor conviction that is used to support
 26 a sentence as a habitual petty offender. A prior unrelated Class A
 27 misdemeanor conviction may be used under this section to support
 28 a sentence as a habitual petty offender even if the sentence for the
 29 prior unrelated offense was enhanced for any reason, including an
 30 enhancement because the person had been convicted of another
 31 offense.

32 (f) If the person is convicted of the felony or Class A
 33 misdemeanor in a jury trial, the jury shall reconvene for the
 34 sentencing hearing. If the trial is to the court or the judgment is
 35 entered on a guilty plea, the court alone shall conduct the
 36 sentencing hearing under IC 35-38-1-3.

37 (g) A person is a habitual petty offender if the jury (if the
 38 hearing is by jury) or the court (if the hearing is to the court alone)
 39 finds that the state has proved beyond a reasonable doubt that the
 40 person had accumulated two (2) prior unrelated felony or Class A
 41 misdemeanor convictions within the five (5) years immediately
 42 preceding the commission of the felony or Class A misdemeanor.

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1 (h) The court shall sentence a person found to be a habitual
2 petty offender to an additional fixed term that is not less than:

3 (1) one (1) year if the underlying offense is a Class A
4 misdemeanor; or

5 (2) the presumptive sentence for the underlying offense, if the
6 underlying offense is a felony.

7 (i) The additional fixed term described in subsection (h) may not
8 be more than:

9 (1) three (3) years, if the underlying offense is a Class A
10 misdemeanor; or

11 (2) three (3) times the presumptive sentence for the
12 underlying offense, if the underlying offense is a felony.

13 However, the additional sentence may not exceed five (5) years.

14 SECTION 4. [EFFECTIVE JULY 1, 2003] IC 35-45-4-1, as
15 amended by this act, and IC 35-45-4-1.5, as added by this act, apply
16 only to acts committed after June 30, 2003.

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